

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2804 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANTIBHAI G PAREKH

Versus

JETEX CARBURETTORS PVT. LTD

Appearance:

MR TR MISHRA for Petitioners

MR MB BUCH for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 16/01/99

ORAL JUDGEMENT

1. Heard learned counsel for the parties. This petition is directed against the order of the Labour Court, Godhra dated 25.2.1997 setting aside the exparte award made in favour of the petitioner. The services of the petitioner had been terminated by the respondent. An industrial dispute was raised and the same has been referred to the Labour Court, Godhra. By its award dated

6.8.93, petitioner workman was ordered to be reinstated on termination order having been found invalid. The award had been made exparte as no one has remained present at the time of hearing or while cross-examining the witnesses. Though the reply to the claim of the workman had been filed at the first instance. The award was made considering the reply. It was the case of the petitioner that the respondent had engaged one K.C. Raval, advocate to appear on their behalf, but he did not appear and therefore there was sufficient cause for the petitioner remaining absent at the time of hearing.

2. Application under Rule 26A of Gujarat Industrial Disputes Rules was made for setting aside the exparte award.

3. The court found that the respondent has not appeared to cross-examine the witnesses notwithstanding notices were issued to the company and has not defended the reference. The service of notice on the company is not denied. The power of attorney in favour of K.C. Raval has never been filed in the labour court. Thus the court did not consider the absence of Shri K.C. Raval, advocate as sufficient cause for setting aside the exparte decree. However, the application was allowed on the ground that the fact remains that the award has been made exparte and in order to adhere to the principles of natural justice, the company must be given an opportunity to defend itself, and for this reason exparte order must be set aside. Costs of Rs.1000/- was awarded in favour of the respondent workman.

4. Having heard learned counsel for the parties and perused the order under challenge, it is apparent that the Tribunal has not found any sufficient cause for setting aside the exparte order. It has not accepted the plea of the respondent about absence of Mr. K.C. Raval and has refused to accept the same as sufficient cause for setting aside the exparte award, obviously for the reason that the Labour Court was not satisfied whether Mr. K.C. Raval was at all engaged by the petitioner inasmuch as the Vakalatnama of Mr. K.C. Raval was not there on has not found place on the record nor K.C. Raval has put in appearance, or filed affidavit to suggest that he was ever engaged in the case. The service of notice on the petitioner is not denied. The principle of natural justice is no unruly horse. What is required by the Tribunal is to afford an opportunity to defend oneself fairly and properly, but it is not for the Tribunal to enforce somebody to avail the opportunities offered to him if one fails to do it without sufficient

cause. In this case, the facts narrated in the order itself shows that opportunity was offered to the respondent to defend himself against the claim of the workman petitioner which opportunity it failed to avail notwithstanding filing reply to the claim. The jurisdiction to restore exparte orders to get rid of exparte order howsoever wide and discretionary is not injudicious one.

5. Moreover, the Labour Court apparently failed to notice apparent change in the stance of the employer in his application under Rule 26A quite contrary to what has been taken in the reply to the claim, while invoking its jurisdiction to set aside the exparte order under Rule 26A of the Gujarat Industrial Disputes Rules. While in the reply to the claim of workman it has been the case of the employer that the workman has been dismissed after holding due departmental enquiry into the alleged misconduct and on finding the workman guilty of the misconduct he has been dismissed, in the application for setting aside ex parte award it has been unequivocally stated that the services of the petitioner workman had not been terminated at all. What has been stated is that after finding him guilty of misconduct he has been given an opportunity to offer apology and resume the duty. If that is so, one fails to understand how the respondent can be aggrieved of reinstatement ordered by the Tribunal. The order of reinstatement accords with existing relationship admitted in application under consideration. In such circumstances, recalling the order of reinstatement cannot be said to be in the interest of justice either, the spacious plea on which application was granted.

6. In the circumstances, this petition succeeds. The order of Labour Court setting aside the exparte award under challenge is quashed and the award made by the Labour Court is restored.

Rule is made absolute. Respondent to pay the costs of the petition.

(Rajesh Balia, J)